BILL FOR THE PREVENTION OF CRUELTY TO ANIMALS.

Mr. Ferguson.—I beg to move for permission to introduce a Bill for the prevention of cruelty to animals. It has long been my desire to see a legislative enactment passed on the subject and in the early days of this Council, I asked the late Mr. Watts to introduce such a Bill. But unfortunately he was unable to fulfil his pledge. Now that I have the chance myself, I take the earliest opportunity of bringing the matter before the Council. That there is cruelty committed almost every day in the streets is, I think, within the experience of all; this being so and as there is a good deal of business to be got through at this meeting, I think it will be unnecessary for me to enlarge on this aspect of the subject. At present the only protection that dumb animals have is the power given to a Police-officer under clause 2 of section 23 of the Police Regulation to arrest without warrant any person who within view wantonly or cruelly abuses or tortures any animal. So far as I am aware, this power is never used and I have never heard of any prosecution under this section. I think, therefore, that some further powers should be provided by the law to secure this object. I have drafted this Bill on the lines of Act X of 1890 of British India, and the fact that it has been found desirable and useful in other parts of India to introduce legislation on the subject will, I trust, induce the Council to accord their ready sanction to the introduction of the Bill.

Permission was granted accordingly.

BREACH OF CONTRACT REGULATION AMENDMENT BILL.

Mr. Rajaram Row.—I beg to introduce a Bill for the amendment of the present law on the subject of criminally dealing with breaches of contract by artificers and labourers. That law is contained in Regulation I of 1040, and was passed on the lines of British Indian Act XIII of 1859. Some of its provisions are anomalous and the law itself is not sufficiently effective. All jurisdiction over cases falling under it was restricted to the Zillah Criminal, the present Sessions, Courts, and although by Regulation II of 1052 it was extended to the then Division Magistrates, that is, the present District Magistrates, and to certain others who might be invested with the same powers by Government, the original jurisdiction which the Sessions Courts were at first given still continues in their hands, while in no other class of criminal cases it is so. It is now possible for an employer to prosecute a defaulting contractor of a distant village in Shencottah before the Sessions Court of Quilon and thus cause him serious inconvenience. This state of matters requires mending, and local Magistrates of a certain grade should have the power to deal with such cases. One of the sections of Regulation I of 1040 is redundant, inasmuch as it has a place in our Penal Code. Moreover, as already observed, the present Regulation is not sufficiently effective, and inconvenience is felt by certain large classes of employers. Seeing that there is a heavy programme before the Council to be gone through this evening, I will not enter into further explanations. With a view to place matters on a better footing, I shall, if you will grant the permission I seek, place before you at a future meeting a Bill to amend the present law.

Permission was granted accordingly.

LUNACY BILL.

Mr. Kunhiraman Nair.—At the last meeting of the Council, I obtained permission to introduce the Lunacy Bill which, with the usual Statement of Objects and Reasons, has since been published in the Government Gazette. The Bill, as stated in the preamble, is designed to make provision for the care of the person and the estates of lunatics, and for their reception and detention in Lunatic Asylums established by Government. The necessity for legislation on the subject has been briefly touched upon in the Statement of Objects and Reasons and in my remarks at the last meeting, and is self-evident when I say that there is no statutory provision in this State for the care of the property and person of civil lunatics, *i. e.*, lunatics not accused or convicted of any offence, Chapter 33 of the Criminal Procedure Code being applicable only to criminal lunatics. Since the publication of the Bill, a case in which the District Magistrate of Alleppey, Mr. Maltby, found himself unable, by reason of the non-existence of a special law, to afford adequate protection to a

LIBRARY ARCHIVES Kerala Legislative Assembly

wandering Mahomedan lunatic, has been brought to the notice of Government, and it is thought that legislation for the protection of the property and person of lunatics should no longer be delayed.

The Bill has been framed on the lines of the British Indian Lunacy Acts 35 and 36 of 1858, with necessary modifications and alterations to suit local conditions and requirements. The essential features of the main provisions of the Bill are the same as those of the British Indian system, which has been advantageously worked for more than 40 years. That system seems to have been evolved out of the Roman and British Jurisprudence. The leading principles of the Roman Jurisprudence were that an insane person, having no intelligent will and being thus incapable of voluntary action, could acquire no rights and incur no responsibility by his own acts. His person and property were placed, after enquiry by the Magistrate, under the control of a curator. The fact of insanity operates in law (1) by excluding responsibility for crime, (2) by invalidating legal acts, (3) by affording ground for depriving the insane person by a legal process of the control of his person and property, and (4) by affording ground for putting him under restraint. In England, the wardship of lunatics, which was originally annexed to the King's prerogative, had regard chiefly to the control of the lunatic's lands and estates, and was only gradually elaborated by Acts of Parliament into the systematic control of the lunatic's person and property now exercised under the provisions of the Lunacy Regulations: 8 and 9 Vic. c. 109; 16 and 17 Vic. c. 76; 18 Vic. c. 13; 25 and 26 Vic. c. 86.

The machinery and resources of this State do not admit of the introduction, in their entirety, of the elaborate provisions of the British Regulations under which Commissioners in Lunacy are to be appointed, private houses may be licensed for the reception of lunatics, and the cost of maintenance of pauper lunatics charged upon boroughs, counties or parishes to which the lunatics belong; nor have these Regulations been followed in their entirety in British India. Prior to these Regulations the insanes, whose means were insignificant, were left to the care of their relations or charity, but at common law, insane persons are placed under personal restraint when they prove dangerous to themselves and others. This latter procedure, which seems convenient, is what was substantially adopted in British India and is reproduced in this Bill as being suited to local circumstances.

The enactment of laws of the type prevailing in England for charging the maintenance of pauper lunatics upon the borough, parish, county or union in which such lunatics happen to reside, is unnecessary in the state of society here. One of the merits claimed for the Indian joint-family system is that it does away with the necessity for Poor Laws and no public advantage is gained by the interference of the State with those who are properly protected by their relatives and who have no property to be taken care of, though as an abstract proposition of law, the State has the right of interference. Such interference, involving as it does, the maintenance and supervision of all sorts of lunatics without actual public necessity, would be unjust to the general tax-payer, as the maintenance of pauper lunatics in Lunatic Asylums would add unnecessarily to the burden of the State. It goes without saying that every care should be taken not to interfere beyond actual necessity with the freedom and sanctity of domestic rights. The Bill accordingly proposes to deal principally only with two classes of lunatics: (1) lunatics possessed of property; (2) lunatics exhibiting dangerous symptoms and left unprotected by their relations, and allowed to wander at large to the annoyance and injury of the public.

Insanity or lunacy is of different degrees and types, but the insane or lunatic whose property and person need protection, is one whose mental aberration is such as to produce incapacity for the management of affairs, or who exhibits dangerous symptoms which make him an object of fear to the public. The Madras Court of Wards Act, I of 1902, provides for the assumption, by the Court of Wards, of superintendence of person and property, amongst others, of proprietors adjudged by a competent civil court to be of unsound mind and incapable of managing their property. The Lepers Regulation recently passed by this State affords a precedent for the distinction made between harmless and dangerous lunatics. It is not all lepers that are put under restraint, but only those in whom the disease has reached that stage when it is considered contageous and as such dangerous to the public.

LIBRARY ARCHIVES Kerala Legislative Assembly

The main provisions of the Bill, which are simple and unpretentious, may now be briefiy described.

The preamble expresses the purpose of the enactment, and section 1 is a statement of its local application and the time at which it is to come into force. The definitions of the terms "lunatics" and "dangerous lunatics" in section 2 are so framed as to indicate the class of lunatics whom it is sought to bring within the purview of the present measure, and the definitions of other terms are taken from the Guardians and Wards Regulation.

Sections 3, 4, 5 and 6 empower Government to establish Lunatic Asylums for the reception and detention of lunatics, to appoint Superintendents and visitors and make rules for the management of such Lunatic Asylums and for the maintenance of discipline therein. There is already a Lunatic Asylum in Trivandrum, but the rules for its management have not the sanction of law and it is doubtful if the rules or orders can be enforced as law *i. e.* whether their breach can be visited with proper punishments at the hands of the criminal courts. The necessity for these provisions, in order to give legislative sanction to executive acts, is clear. Sections 7 to 13 prescribe the mode of enquiry into, and adjudication upon, the question of lunacy. These provisions are borrowed from the British Indian Act 35 of 1858, which in substance is an adaptation of the principle and procedure laid down in 16 and 17, Vic. c. 70, and 25 and 26 Vic. c. 86, to the conditions existing in India.

The question of insanity is, in England, tried before one of the Masters in Lunacy, with or without a jury according to circumstances. The terms of the enquiry are whether the party alleged to be a lunatic is of unsound mind and incapable of managing his affairs, and on this being found in the affirmative, his person and property are placed in charge of one or more persons. The importance of this enquiry cannot be exaggerated, and cases are not rare in which from interested motives, false accusations as to the unsoundness of mind of the owners and holders of property have been made. It is but right to closely scrutinise allegations of this sort by means of a judicial enquiry conducted according to well-recognised principles. The courts, although giving prominence to expert evidence, go a good deal on the theory that medical evidence is merely part of the general evidence in the case, and this theory should, for obvious reasons, be maintained at least where large prospectives are at stake. The opinion of medical experts, though entitled to much weight, is not infallible. Doctors differ, as has been shown by many a reported case, and general evidence as to mental capacity should not be shut out, if the ultimate pronouncements are to command public confidence. Although I yield to no one in my admiration of medical experts, I must confess that my faith in their omniscience has been subjected to a severe strain by several cases I have come across.

Section 14 reproduces with modifications the provisions of section 9 of the British Indian Act 35 of 1858, anent the management of the estates of persons found on enquiry to be of unsound mind; and so does section 15 providing for the remuneration of managers and guardians follow the corresponding provisions of section 12 of of the British Indian Act. The duties, rights and liabilities of guardians of lunatics should, in principle and reason, be the same as those of guardians of minors, and the provisions of the Guardians and Wards Regulation on the subject seem to be better fitted for the guardians of lunatics also, and they have therefore been made applicable by section 16 in preference to the provisions contained in Act 35 of 1858.

Section 17 is taken from section 16 of the British Code, but the words "purchase of lands" have been added in order to sanction the investment of surplus funds belonging to the estate of a lunatic in the purchase of lands, a mode of investment congenial to the tastes and sentiments of the people, the majority of whom are agriculturists and who consider the possession and ownership of lands very beneficial. A new clause, (2), has been added to section 18 corresponding to section 20 of the British Act providing for the detention of lunatics of limited means in Lunatic Asylums, with the consent of their relations. There are several classes of people who, unlike some other classes, have no prejudice against entering Lunatic Asylums as no social indignity is involed in the act. The curative treatment to be had in such asylums

LIBRARY ARCHIVES Kerala Legislative Assembly

under the supervision of medical men, would be very beneficial to the lunatic. The relatives of a lunatic may ordinarily be persumed to know what is and what is not for the lunatic's benefit. Their consent is sufficient guarantee against any hasty action on the part of the court and such consent is made a condition precedent to the placing of the lunatic in asylums. Sections 20 to 25 deal with dangerous lunatics and are, with considerable modifications, taken from the British Act, 36 of 1858, every care being taken to make the provisions of the law work without any hardship to the parties concerned. The advisability of placing lunatics of dangerous character under proper restraint and thus preventing them from doing harm to the public, admits, I believe, of but little doubt, and it is well-known that some of our bazaars, markets and public thoroughfares are often visited by dangerous lunatics, to the annoyance of the public.

Section 26 provides for the discharge of lunatics from asylums under the orders of the Visitors or Durbar Physician, and sections 27 and 28 empower the District Court to make orders for the payment of costs of maintenance of a dangerous lunatic, out of the lunatic's estate, if any, or by a person legally bound to maintain him and enforce such order as a decree of court. Such power is very necessary, and the existence of such power would act as a check upon the relations of dangerous lunatics and induce them to keep the lunatics under proper control and not to allow them to be arrested by the authorities and detained at their (relations') expense. The remaining sections call for no special remarks. With these observations, I beg to move under Rule 33 that the Bill be read in Council, and that the principle of the Bill be affirmed.

Seconded by Mr. Rajaram Row.

Mr. Kesava Pillai.—The necessity for an enactment providing for the protection of lunatics and their estate is apparent. The protection of incapables is one of the special prerogatives attaching to Sovereignty. Lunatics being, like minors, incapable of taking care of themselves, the principle on which the State exercises its prerogative is the same in the case of both. There is, however, an additional principle underlying the Bill before us *viz.* the duty of the State to protect the public against dangerous lunatics. Thus, in the interests of lunatics as well as of the public, the measure is useful and necessary.

The Bill seeks to protect not only homeless and helpless lunatics who wander about without means of subsistence, but also lunatics who, although they have houses and property, are placed in such special circumstances as necessitate the intervention of the State. In the case of the latter class of lunatics, however, proper checks ought, I think, to be placed against needless and vexatious litigation in the civil courts. The Bill provides for the District Court taking action on the application of any relative of a person of unsound mind having no landed property. Which relatives may exercise this right is not manifest. If the court is to proceed on the application of any relative, the law may sometimes become an instrument in the hands of intriguing persons in their designs against innocent individuals. The protection of lunatics being one of the duties of the State, I would suggest that the initiation in all such cases should be taken by the State itself acting through its executive officers. There may then be a guarantee that the interference of the court will be sought only in cases of absolute necessity. Otherwise, it is possible that even a person of sound mind may be brought before the court and needlessly harassed by a designing relative.

One more observation I have to make. The Bill empowers the District Court to send a lunatic having property to an asylum according to the discretion of the Court. It seems to me that this procedure ought to be adopted only when no other course is possible, *i. e.* when no proper guardian for the person of the lunatic can be appointed.

With the above observations, I beg to support the principle of the Bill.

The Council having affirmed the principle of the Bill, Mr. Kunhiraman Nair proposed that the Bill be referred to a Select Committee consisting of Messrs. Kesava Pillai, Kuruvila, Padmanabha Menon and the Mover, to report within three months.

LIBRARY ARCHIVES Kerala Legislative Assembly

Seconded by Mr. Nagam Aiya.

Carried.

CIVIL PROCEDURE CODE AMENDMENT BILL.

Mr. Kunhiraman Nair.—I beg to move that the Report of the Select Committee on the Civil Procedure Code Amendment Bill be taken into consideration.

The Bill as originally introduced has been thoroughly recast by the Select Committee who have added 33 more sections embodying further amendments to the Bill. These amendments have been briefly explained in the Report which was presented to the Council on 30th November 1901 and published in the official Gazette. The advisability of amending Procedure Codes from time to time, with a view of curing any defects discovered in the course of working these codes, has been acknowledged by eminent jurists and statesmen; and the object of the Bill as revised, and of the further amendments which I shall have to propose presently, is the removal, as far as possible, of the doubts raised by several reported decisions of courts here and elsewhere, on the interpretation of the C. P. C, and of the practical inconveniences and difficulties experienced in the working of the existing code. It may also be observed that in making amendments, we are moving but slowly and with due caution, as will be evident from the fact that the Civil Procedure Code now in force in this State enacted in the year 1065 on the basis of the British Indian Code (Act 14 of 1882) has been amended here only once, that is by Regulation II of 1070, during the last 12 years it has been in operation, though the corresponding British Indian Code has been amended by as many as 17 Acts of general, and 7 Acts of local application. Another draft Bill for a thorough revision and re-enactment of the whole Code has also been published by the Government of India since the presentation of the Report of our Select Committee, but the British Indian Bill, which is of a comprehensive nature, is only in its initial stage and may take a couple of years before it can be passed into law. The legislation already undertaken here, which is sufficient for our present purpose, need not be delayed until the passing of the recent British Bill, though we may take this opportunity of incorporating in our Bill, with the necessary modifications, such of the amendments suggested by the British Indian Bill as seem worthy of adoption in the circumstances of this State and are not of a controversial kind. A reason for instant action is furnished by the urgent necessity there is for protecting from attachment, on the lines of the British Indian Act 9 of 1897, the State Insurance Fund recently established in this State, and for enacting the amendments relating to the conduct of suits on behalf of minors and other incapable persons as contained in sections 420, 423, 426 and 441 of the Civil Procedure Code which, on the recommendation of the Select Committee on the Guardians and Wards Bill since passed into law, had been transferred to the present Bill. Another reason for our passing the present Bill is that as the law of Civil Procedure has an intimate bearing upon the efficient administration of justice, any amendment calculated to improve that law, even though in a fragmentary form, should be instantly adopted, the work of comprehensive codification being reserved for leisurely consideration when proper materials for such codification are before the Government.

Coming to the Select Committee's report, I shall describe to the Council the chief amendments made by the Committee leaving out the minor amendments sufficiently explained in the report.

Firstly.—The Committee have, at the suggestion of the local High Court, added a new para to section 154 giving express power to the courts to refuse to issue processes to witnesses when the application is made so late that the summons could not be served in time and the witness could not possibly appear at the date fixed for hearing. This power is exercised in practice, but in the absence of legislative recognition of the practice, questions as to the legality of the practice may be raised. One of the dodges of unscrupulous litigants is to procrastinate a trial, by applying for summonses at late stages and the amendment will, it is hoped, cure the evil to some extent. It was suggested by the local High Court, in conformity with the rulings of the British High Courts quoted in the Committee's Report, that the courts should also be empowered to refuse summonses where there is reason to think they are

LIBRARY ARCHIVES Kerala Legislative Assembly